

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.

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RAMON GARCIA,

Petitioner,

vs.

T. JOHNS, Warden, and
DHS-ICE,

Respondents.

CIVIL ACTION NO.: CV513-052

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Ramon Garcia ("Garcia"), who is currently housed at D. Ray James Correctional Institution in Folkston, Georgia, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondents filed a Response.¹ For the reasons which follow, Garcia's petition should be **DISMISSED**.

STATEMENT OF THE CASE

Garcia was convicted in the Middle District of Florida of the manufacture and cultivation of less than 100 marijuana plants, in violation of 21 U.S.C. §§ 841(a)(1) & (b)(1)(B)(vii). Garcia was sentenced to 60 months' imprisonment. Garcia has a projected release date of August 4, 2015, via good conduct time credit. (Doc. No. 5-1, p. 8).

¹ Garcia names the Warden and "DHS-ICE" as the Respondents in this case. However, the only proper respondent in a section 2241 proceeding is the warden at the institution in which a petitioner is housed. 28 U.S.C. § 2242; Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004).

In this petition, Garcia asserts that he was sent to D. Ray James Correctional Institution to participate in the Immigration Hearing Program, but this program is not being given. Garcia contends that he is being subject to a longer period of incarceration because he cannot benefit from any program providing rehabilitation rights. Respondents assert that this petition should be dismissed because Garcia failed to exhaust his administrative remedies.

DISCUSSION AND CITATION TO AUTHORITY

"[P]risoners seeking habeas relief, including relief pursuant to [28 U.S.C.] § 2241," must exhaust all available administrative remedies. Skinner v. Wiley, 355 F.3d 1293, 1295 (11th Cir. 2004). If a petitioner fails to exhaust his administrative remedies before seeking redress in the federal courts, the court should dismiss the case for want of jurisdiction. Winck v. England, 327 F.3d 1296, 1300 n.1 (11th Cir. 2003) (citing Gonzalez v. United States, 959 F.2d 211, 212 (11th Cir. 1992)). "Also jurisdictional is '[t]he general rule . . . that a challenge to agency actions in the courts must occur after available administrative remedies have been pursued.'" Id. (quoting Boz v. United States, 248 F.3d 1299, 1300 (11th Cir. 2001)).

In Porter v. Nussle, the United States Supreme Court held that exhaustion of available administrative remedies is mandatory. 534 U.S. 516, 523 (2002). The Supreme Court has noted exhaustion must be "proper." Woodford v. Ngo, 548 U.S. 81, 92 (2006). "Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." Id. at 90-

91.² In other words, an institution's requirements define what is considered exhaustion. Jones v. Bock, 549 U.S. 199, 218 (2007). It is not the role of the court to consider the adequacy or futility of the administrative remedies afforded to the inmate. Higginbottom v. Carter, 223 F.3d 1259, 1261 (11th Cir. 2000). The court's focus should be on what remedies are available and whether the inmate pursued these remedies prior to filing suit. Id.

Inmates at D. Ray James must exhaust administrative remedies, beginning their grievance process locally with the Warden by using the contractor's grievance procedures.³ (Doc. No. 5, pp. 4—5). This involves an attempt at informal resolution, which, if unsuccessful, is followed by a formal complaint via a Step 1 administrative remedy form. (Id. at p. 5). If the inmate is not satisfied with the resolution of the formal complaint, the inmate may appeal to the Bureau of Prisons' ("BOP") Administrator of the Privatization Management Branch, so long as the appeal involves BOP related matters.⁴ (Id.). If the inmate is not satisfied with the Privatization Administrator's response, the inmate may make a final appeal to the BOP's Office of General Counsel. (Id. at p. 6). If an inmate files an administrative remedy concerning a BOP related matter, the administrative remedies will be recorded in the BOP's SENTRY computer database.

Pichardo v. United States of America, (Case Number CV511-69, Doc. No. 8, p. 3).

² Although Woodford was a civil rights suit rather than a habeas petition, the Court "noted that the requirement of exhaustion is imposed by *administrative law* in order to ensure that the agency addresses the issues on the merits." Fulgencio v. Wells, CV309-26, 2009 WL 3201800, at *4 (S.D. Ga. Oct. 6, 2009) (emphasis in original) (quoting Woodford, 548 U.S. at 90) (internal punctuation omitted). Thus, exhaustion requirements are applicable to habeas petitions.

³ The BOP contracts with GEO Group, Inc., to house approximately 2,200 low security criminal alien inmates at D. Ray James Correctional Institution. (Case Number CV511-69, p. 3, n.3).


⁴ Examples of BOP related matters which must be appealed through the BOP are: sentence computations, reduction in sentences, removal or disallowance of good conduct time, participation in certain programs, and an inmate's eligibility for early release upon successful completion of the RDAP. (See Case Number CV511-69, p. 3, n.4).

The issues raised in Garcia's petition involve BOP related matters. (See, n.4). Garcia has not filed a BOP administrative remedy during his incarceration at D. Ray James Correctional Institution, as shown by the SENTRY database. (Doc. No. 5-1, p. 16). Therefore, he has not exhausted his available administrative remedies regarding the issues raised in his petition. As Garcia has not exhausted his available administrative remedies, the Court lacks subject matter jurisdiction to hear his petition.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Garcia's § 2241 petition be **DISMISSED**, without prejudice, due to Garcia's failure to exhaust his available administrative remedies.

SO REPORTED and **RECOMMENDED**, this 7th day of August, 2013.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE